IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 1085 of 2001
Date of decision: August 1, 2006

Gurmit Singh and others --- Appellants

Versus

Sulakhan Singh and others --- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Ramesh Sharma, Advocate for the appellants.

Mr. Harpal Singh Sirohi, Advocate for the respondents.

JUDGMENT

This second appeal at the instance of the plaintiffs arises out of a suit for declaration whereby they sought a decree to the effect that they were owners in possession of 13/15th share of land measuring 189 Kanals 6 Marlas i.e. 164 Kanals and 1 Marla situated in village Kandila, Tehsil Batala. As a consequential relief, the plaintiffs also prayed for a decree for perpetual injunction restraining the defendants from interfering in their possession over the land in dispute. It was alleged that one Smt. Guro had bequeathed her share in the suit land to the plaintiffs by virtue of a valid will dated 5.12.1988, but the defendants alleging themselves to be the natural heirs of Smt. Guro got a mutation of her estate sanctioned in their favour which was wrong, illegal and against law. Possession of the plaintiffs over the land in dispute was denied by the defendants who further alleged that the aforesaid will was a forged and fabricated document and the same had been propounded after the death of Smt. Guro.

The controversy between the parties gave rise to the following issues:-

1- Whether Smt. Guro executed a valid will dated 5.12.1988 in favour of the plaintiffs? OPP

2- Whether the plaintiffs are entitled to the declaration on the facts pleaded? OPP

2-A Whether the plaintiffs have become owners of the suit land by way of adverse possession? OPP

3. Relief.

All the issues were decided against the plaintiffs. Consequently the suit, so far as 1/3rd share of the suit property belonging to Aas Kaur and Guro was concerned and which had been inherited by the defendants, was dismissed by the trial court. The plaintiffs were, however, held entitled to a declaration that they continued to be co-sharers in the suit land to the extent of 8/15th share. In appeal the District Judge, Gurdaspur affirmed the findings of the trial court and consequently dismissed the appeal.

I have heard learned counsel for the parties and perused the record. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. Learned counsel for the appellants could not pin-point any illegality or perversity in the said findings. Nothing was shown that the said findings are either based on no evidence or there was any mis-reading or mis-appreciation of evidence while recording the same. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 01, 2006
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